



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/163754

PRELIMINARY RECITALS

Pursuant to a petition filed February 06, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on February 26, 2015, at Milwaukee, Wisconsin.

NOTE: The record was held open, because the Milwaukee Early Care Administration (the agency) indicated that it would be adjusting the overpayment and reducing the amount owed. On March 6, 2015, the agency submitted a new Child Care Client Overpayment notice and overpayment worksheets. They have been marked as Exhibit 3 and entered into the record.

The issue for determination is whether the agency has correctly determined that the Petitioner was overpaid child care benefits between May 11, 2014 and June 30, 2014, in the amount of \$1,845.90.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: LaReina Horton, Child Care Subsidy Specialist
Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. DE (CARES # [REDACTED]) is the mother of Petitioner's child and received child care benefits. (Testimony of DE; Exhibit 3)
2. The Petitioner moved into the DE's residence on or about May 5, 2014. (Exhibit 2, pg. 98; testimony of Petitioner)
3. DE reported this change to her W-2 worker and to child support enforcement, but neither the Petitioner, nor DE reported the change to MECA or Milwaukee Enrollment Services. (Testimony of Petitioner)
4. On January 15, 2015, the agency sent to the Petitioner a manual Child Care Client Overpayment Notice, indicating that he was overpaid child care benefits in the amount of \$2128.40 for the period of May 4, 2014 to June 30, 2014. (Exhibit 2, pgs. 3-4)
5. On January 16, 2015, the agency sent the Petitioner an automated Child Care Overpayment Notice, claim number [REDACTED], advising the Petitioner that he was overpaid child care benefits in the amount of \$2,128.40 for the period of May 1, 2015 to June 30, 2014. (Exhibit 2, pg. 5)
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 6, 2015. (Exhibit 1)
7. On March 6, 2015, the agency sent the Petitioner a new Child Care Client Overpayment Notice, changing the beginning of the overpayment period from May 4, 2014 to May 11, 2014 and reducing the amount of the overpayment from \$2128.40 to \$1,845.90. (Exhibit 3)
8. During the time in question, the Petitioner's household consisted of three people and the sole source of income came from Petitioner. (Exhibit 2, pgs. 84-90)
9. Petitioner earned \$10,568.78 in the first quarter of 2014 (January through March) and he earned \$13828.50 during the second quarter of 2014 (April through June). He typically works 40 hours per week and earns \$21.00 per hour.¹ (Exhibit 2, pgs. 17-96)

DISCUSSION

I. JURISDICTION

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat § 49.155(1). Prior to January 1, 2004, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. *Wisconsin Share Child Care Assistance Manual*, §2.1.5.3 See also, Wis. Stat §49.195(3), § 49.152(2), & § 227.42, *et. seq.*

II. A RECIPIENT MUST REPAY A CC OVERPAYMENT IF EITHER THE RECIPIENT OR THE AGENCY WAS AT FAULT IN CREATING THE OVERPAYMENT.

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Wisconsin Shares Child Care Assistance Manual*, §2.1.4.2. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment

¹ \$21.00 x 40 hours per week = \$840.00 per week x 4.3 average weeks per month = \$3612.00 average monthly income.

claim against the petitioner. This provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

III. PETITIONER'S LIABILITY

Liability for overpayments, "shall extend to any parent, nonmarital coparent, or stepparent whose family receives benefits under s. [49.148](#), [49.155](#), [49.157](#), or [49.19](#), Stats., during the period that he or she is an adult member of the same household...Liability for repayment of an overpayment shall be joint and several. *Wis. Admin. Code DCF 101.23(3)(a) and (b)*.

"Assistance Groups are defined as an individual who is a custodial parent or placement parent, and their dependent children, and all dependent children with respect to whom the individual's dependent child is a custodial parent...The Assistance Group also includes any nonmarital coparent or any spouse of the individual who resides in the same household as the individual, and any dependent children with respect to whom the spouse or nonmarital coparent is a custodial parent." *Wisconsin Shares Child Care Assistance Manual (CCM) §1.3.8*

Because the Petitioner is a non-marital co-parent living in the same household as the DE and their child, he is jointly and severally liable for the childcare overpayment.

IV. INCOME LIMITS

Petitioner did not dispute the fact that he used child care benefits in the amounts stated by the agency, but he contested the determination that he was not eligible for childcare benefits during the time in question.

In order for initial applicants to be eligible for Child Care benefits, household income must be below 185% of the Federal Poverty Limit (FPL). *Wisconsin Child Care Assistance Manual* §1.6.2 For on-going eligibility, income cannot exceed 200% FPL. *Wisconsin Child Care Assistance Manual* §1.6.3 Income is evaluated on the basis of gross monthly income and income of all assistance group members, except minors and dependent 18 year-olds, must be counted. *Id. at* §1.6.4

This case concerns on-going benefits. (Testimony of Ms. Horton) As such, in order for Petitioner to be eligible for benefits during the period of May 2014 through June 2014, his household income needed to be at or below 200% FPL, which for an assistance group size of 3 is \$3298 per month. See <https://www.dhs.wisconsin.gov/library/14-05.htm>

Petitioner did not contest the accuracy of the wage information contained in Exhibit 2. It appears the agency used the Petitioner's first quarter earnings to calculate his monthly income: $\$10,568.78 \div 3 = \3522.92 . (See pgs. 4 and 17 of Exhibit 2)

\$3522.92 is over the 200% FPL, \$3298 income limit. Consequently, the Petitioner was not eligible for childcare benefits in May and June 2014 and the agency correctly determined that he was overpaid benefits in those months.

V. THE OVERPAYMENT PERIOD

The Petitioner moved into the residence on or about May 5, 2014. The Petitioner did not report this to Milwaukee Early Childhood Administration or Milwaukee Enrollment Services within ten days as required by *Wisconsin Child Care Assistance Manual* §1.15.1.

"If the change is not reported timely, the change should be considered effective the date of the change. The overpayment period would begin the first full week following the change." *Wisconsin Child Care*

Assistance Manual §2.1.5.1 Consequently, the agency has correctly started the overpayment period, effective May 11, 2014.

CONCLUSIONS OF LAW

The agency correctly determined that the Petitioner was overpaid childcare benefits for the period of May 11, 2014 to June 30, 2014, in the amount of \$1,845.90.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 9th day of March, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 9, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud